

SEP 04 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR MANUEL HUIZAR-PEREZ,
aka Victor Manuel Huizar Perez, Victor
Manuel Hulzar,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-72800

Agency No. A95-626-102

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted August 26, 2008^{**}

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges.

Victor Manuel Huizar-Perez, a native and citizen of Mexico, petitions pro se
for review of the Board of Immigration Appeals' order dismissing his appeal from

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

an immigration judge's decision denying his motion to terminate and ordering him removed. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review de novo claims of citizenship. *Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1092 (9th Cir. 2005). We deny the petition for review.

Contrary to Huizar-Perez's contention, the record before us presents no genuine issue of material fact requiring us to transfer this petition for review to district court for a hearing on Huizar-Perez's claimed derivative United States citizenship. *See* 8 U.S.C. § 1252(b)(5)(A) (where court of appeals determines from the record that no genuine issue of material fact about petitioner's nationality is presented, court shall decide the claim).

Huizar-Perez's Mexican birth certificate provides evidence of his foreign birth, gives rise to a rebuttable presumption of alienage, and shifts the burden of proof to Huizar-Perez to establish derivative U.S. citizenship by a preponderance of the evidence. *See Scales v. INS*, 232 F.3d 1159, 1163 (9th Cir. 2000). We agree with the agency's assessment of the record evidence, and conclude that Huizar-Perez failed to meet his evidentiary burden.

PETITION FOR REVIEW DENIED.